

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB241

Hearing Date: Tuesday February 03, 2009
Committee On: Agriculture
Introducer: Pahls
One Liner: Change the Commercial Dog and Cat Operator Inspection Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Carlson, Council, Dierks, Dubas, Karpisek, Price, Schilz, Wallman
Nay:
Absent:
Present Not Voting:

Proponents:

Senator Rich Pahls
Judy Varner
Clem Disterhaupt
Robert Downey

Representing:

Introducer
Nebraska Humane Society
Nebraska Professional Pet Breeders Association
Capital Humane Society

Opponents:

Kevin Peterson
Art Armbrust

Representing:

Nebraska Farm Bureau
Nebraska Field Trial Association - Nebraska Sportsmen's Council - German Shorthaired Pointer Club of Nebraska - German Wirehaired Pointer Club of Eastern Nebraska
Jack Russell Terrier Club of America
Self

Patti Podliska
Paul Nichols

Neutral:

Penny Fattig
Amy Lambrecht

Representing:

Nebraska Pet Breeders
The Nebraska Dog Breeders Association

Summary of purpose and/or changes:

LB 241 inserts a series of updates and clarifications into the Commercial Dog and Cat Operator Inspection Act. The primary substantive elements of the bill include the following:

*Defined terms "boarding kennel" and "commercial breeder" contained in Section 54-626 are revised as follows:

*A boarding kennel is currently defined to mean a facility, other than a veterinary, animal control facility and non profit shelter, temporarily housing dogs or cats owned by persons other than the operator of such facility, including housing animals temporarily for grooming, training, and other non-veterinary service. Facilities which house thirty or fewer animals in a twelve-month period are excluded from the definition. LB 241 removes the exclusion of facilities housing fewer than thirty animals a year but adds exclusion of facilities housing animals as an incident to providing grooming, training etc. services from the definition of a boarding kennel unless the facilities houses animals overnight. .

*A commercial breeder is currently defined to mean persons engaged in the business of breeding dogs or cats with the exclusion of persons harboring three or fewer unaltered animals or who sell thirty or fewer dogs or cats in a year provided all such sales are not to ultimate consumers. LB 241 rewrites the definition to be consistent with current interpretation and application that persons meeting any one of the criteria of selling more than 30 animals, having four or more animals intended for breeding, and knowingly selling any number of animals to brokers or retailers are commercial breeders. The twelve month period is defined to correspond with a license year which begins on April 1 of each year. The bill would further define as breeders, persons whose animals produce four or more litters per year.

*Revises authority of the Department relating to entry and inspection. Existing provisions authorizing a right of entry found in Section 54-628 are replaced by new subsections (2) and (3) added to this section by section 5 of the bill and conforming provisions inserted elsewhere in the act. Current law grants authority to enter premises where dogs and cats are known or suspected to be present, or where violations of housing, sanitation and other standards are suspected to occur. LB 241 clarifies this authority as follows:

*Defines premises to expressly include all buildings, vehicles, equipment, pens and housing and records.

*Relocates an affirmative duty of licensees to make premises available for inspection currently found in Section 54-628 to new subsection (5) of Section 54-627 as amended by section 3 of the bill. The duty of a licensee to be open to inspection is clarified to apply during normal business hours.

*Authorize the access of any premise for purposes of inspection, gathering of evidence pertaining to compliance with the Act, and to issue and enforce stop-movement orders. The Department is expressly authorized to seek an inspection warrant if impeded by the refusal of access. Section 9 of the bill inserts a new section declaring a specific violation for any person to deny access or otherwise impede the Department in carrying out the act by obstruction or by misrepresentation or concealment.

*Clarifies that the private residence of an applicant or licensees shall be open to inspection only if a primary enclosure housing dogs or cats is located within the residence and that such access is limited to those portions of a residence utilized as a primary enclosure.

*Authority to issue and enforce stop-movement orders is inserted by Section 6. This section would insert a new section allowing the Department to impose stop-movement if the Department has reasonable cause to believe a non-compliance with the act or the unreasonable sanitation or housing conditions exist. Section 6 grants authority to inspect premises concurrent with the imposition of a stop-movement order. Elements of the order are prescribed to include a description of the violation and the actions necessary to bring the facility into compliance and to release the stop movement. Duties of a licensee during the period of stop movement are enumerated to include:

*Providing an inventory of all dogs and cats upon the premise subject to the order and identifying information

*Timely notification to the Department, of deaths or euthanasia or births occurring

*Maintain animals on the premises until release is granted with the exception that animals may be delivered pursuant to contract entered prior to the issuance of the order.

*Failure to comply with a stop movement order is made a specific violation of the Act under Section 9 of the bill.

The Department is obligated to re-inspect the premise within ten business days and to perform further re-inspections at the Department's discretion if violations persist. The Department is expressly made not liable to costs incurred by a violator resulting from departmental actions in enforcing a stop-movement order and the violator shall reimburse the Department for costs incurred in enforcing a stop-movement order. A person subject to a stop-movement order may request an immediate hearing before the Director.

*Section 8 of the bill inserts a new section prohibiting a breeder from owning more than two-hundred and fifty unaltered dogs or cats over one-year of age. A breeder having more than this limit upon enactment are grandfathered to the extent that the breeders operation is not expanded beyond the number of animals owned by the breeder upon the effective date of the bill. The grandfathering exemption is declared non-transferable and extinguished when the breeder ceases business.

*Specific violations of the Commercial Dog and Cat Operator Inspection Act are inserted as a new section of the Act by Section 9 of the bill.

*The maintenance of a written veterinary care plan in consultation with an attending veterinarian is added to statutory standards of licensure for commercial breeders under Section 10 which amends Section 54-640.

Explanation of amendments:

The committee amendment (AM 428) makes the following substantive changes:

*Modifies the definition of commercial breeder by inserting an additional test to the criteria of having four or more dogs or cats intended for breeding to qualify as a commercial breeder so that the definition applies only to person "engaged in the business of breeding dogs or cats."

*Inserts what becomes section 8 of the bill as revised by the amendment. The new section 8 would amend Section 54-632 to incorporate procedure for accommodating a request for immediate hearing to contest a stop-movement order. The new procedure is modeled after existing procedure relating to request for expedited hearings for review of an immediate license suspension set forth in existing law. The revisions to Section 54-632 provide that the director shall set a date for hearing within 3 business days of receipt of the request and that waiver of the right of hearing occurs by failure to appear or to timely request rescheduling as provided for other hearings afforded by the Act. The Department is instructed to inform those served with stop-movement orders of the possibility of such waiver.

The amendment makes complimentary revisions to Section 6 of the bill to require that a request for hearing be in writing and submitted within two business days of being served with a stop movement order. Revisions to Section 6 also clarify that a stop movement order is final upon its issuance unless modified or rescinded.

*Strikes original Section 8 and thereby removes the cap on the size of breeding operations.

Tom Carlson, Chairperson